IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 699 of 2000

in

SPECIAL CIVIL APPLICATIONNo 14 of 2000
with
LETTERS PATENT APPEAL No.830 of 2000
in
SPECIAL CIVIL APPLICATION No. 18 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI JETHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 699 of 2000
MR JAYANT PATEL for Appellant No.
..... for Respondent No. 1-5
MR PK JANI for Respondent No. 6

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE K.R.VYAS

Date of decision: /08/2001

CAV JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

1. Since a common question of law, namely whether the residents/ Gram Panchayat are required to be heard while reconstituting or abolishing talukas or shifting one village from one taluka to another taluka, arises in these appeals, both these Letters Patent Appeals are required to be heard and disposed of by this common judgment.

2. Letters Patent Appeal No. 699 of 2000 arises out of the judgment and order dated 20.10.2000 passed by the learned single judge in Special Civil Application No. 14 of 2000. The said writ petition was filed by ten members of Kahoda Gram Panchayat and one resident of Kahoda, challenging the Government notification dated 31.12.1999 shifting village Kahoda from Sidhpur taluka of Patan District and placing it in Unjha taluka of Mehsana District.

3. It may be stated that prior to reconstitution of the districts and talukas in October 1997, Kahoda was in Sidhpur taluka of Mehsana District. Mehsana District was bifurcated into Mehsana District and Patan District. Sidhpur Taluka also came to be bifurcated into Sidhpur Taluka placed in Patan District and Unjha taluka placed in Mehsana District. Thereafter vide notification dated 15.10.1997, village Kahoda came to be included in Unjha taluka. By subsequent notification dated 4.12.1997, Kahoda was shifted from Unjha taluka and included in Sidhpur taluka. By the impugned notification dated 31.12.1999, Kahoda has again been shifted from Sidhpur taluka to Unjha taluka.

4. Letters Patent Appeal No. 830 of 2000 arises out of the judgment and order passed in Special Civil Application No. 18 of 2000 dated 20.10.2000. The said petition was filed by the Sarpanch of Vividh Group Gram Panchayat, Ex-Sarpanch of Mudetha Gram Panchayat and few residents of Bhildi taluka, challenging the notification dated 31.12.1999 abolishing Bhildi taluka. Prior to 15.10.1997, Bhildi and other villages were in Deesa taluka. However, upon the reconstitution of districts, on 15.10.1997, new taluka, namely Bhildi taluka came into existence in which 28 villages were added and accordingly Bhildi taluka comprised of 53 villages. By the impugned

notification dated 31.12.1999, all the 53 villages are again made part of original Deesa taluka, which was under challenge in the said petition.

5. The learned single judge dismissed both the petitions mainly relying on the reasonings given in the judgment dated 20.10.2000 delivered in Special Civil Application No. 10459 of 1999 with Special Civil Application No. 390 of 2000 wherein also, those petitioners challenged the notification abolishing Vagadod taluka of Patan District and placing all the villages comprised in the said taluka into Patan taluka.

6. The main contention of the learned Counsel appearing for the appellants is that the impugned decision is illegal and in breach of provisions of Bombay Land Revenue Code, 1879 and Gujarat Panchayats Act, 1993 and violative of the principles of natural justice as no opportunity of being heard was provided to the residents and Gram Panchayat who are vitally affected and who will suffer serious adverse civil consequences on account of the impugned decision.

7. The impugned decision is also challenged on the ground that it is malafide as the same is taken at the behest of MLAs/ MPs by ignoring the wish of the resident as well as the elected members of the Gram Panchayat.

8. Learned Advocate General, on the other hand, submitted that neither the provisions of Gujarat Panchayats Act nor the provisions of Bombay Land Revenue Code impose any obligation upon the State Government to accord any hearing to the villagers or to any Gram Panchayat before taking decision on shifting one village from one taluka to another taluka and in the matter of reconstitution or abolishing talukas. The learned Advocate General relied upon the decision of this Court in the case of Gujarat Panchayat Parishad Vs. State of Gujarat and ors., Special Civil Application No. 7240 of 1997 decided on 24.4.1998 and Patel Baldevbhai Ambalal Vs. State, 1998(1) GLH 1932. By inviting our attention to Article 243(3)(c), learned Advocate General submitted that the said provision requires consultations with Minister/ MLA of the concerned area before taking such decision which has been done in the instant case and, therefore, it is not necessary to hear the residents as well as concerned panchayat.

9. In order to appreciate the grievance made in this petition, relevant provisions of Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code) and the

Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act') are reproduced as under:

Bombay Land Revenue Code:

"7. Division to be divided into district: Each division shall be divided into such districts with such limits as may from time to time be prescribed by a duly published order of the State Government.

A district to consist of talukas comprising such mahals and villages as State Government may direct: And each such district shall consists of such talukas, and each taluka shall consist of such mahals and villages, as may from time to time, be prescribed in a duly published order of the State Government.

And each such mahal shall consist of such villages as may from time to time be prescribed by a duly published order of the State Government.

7.A Power of State Government to alter limits of, or to amalgamate or constitute villages: The State Government may from time to time by a duly published order alter or add to the limits of any village or amalgamate two or more villages or constitute a new village. "

Gujarat Panchayats Act, 1993:

"2. Definitions: In this Act, unless the context otherwise requires-

(5)'district'means a district constituted from time to time under the Land Revenue Code, except the area over which a district panchayat has no authority under section 6.

(7)'district panchayat' means a district panchayat constituted under the Act.

(25)'taluka' means a taluka constituted from time to time under the Land Revenue Code, except the area over which a taluka panchayat has no authority under section 6.

(27)'taluka panchayat' means a taluka panchayat constituted under this Act.

(33)the words 'gram sabha', 'panchayat area',

'population' and 'village' shall have the meanings respectively assigned to them in Part IX of the Constitution.

3. Establishment of Panchayats of different tiers---

For the purpose of this Act, there shall be in each district---

(1) a village panchayat for each village;
(2) a taluka panchayat for each taluka, and
(3) a district panchayat for each district.

7. Recommendation of specification of village:

(1) After making such inquiries as may be prescribed, the competent authority may recommend say local area comprising a revenue village, or a group of revenue villages, or hamlet forming part of a revenue village, for being specified a village under clause (g) of Article 243 of the Constitution if the population of such local area does not exceed fifteen thousand.

(2) After consultation with the taluka panchayat, the district panchayat and village panchayat concerned (if already constituted), the competent authority may at any time, recommend inclusion with or exclusion from any village or any local area or otherwise alteration of limits of any village, or recommend cesser or any local area to be a village, to the Governor for exercise of his powers under clause (g) of Article 243 of the Constitution. "

10. This Court in so many reported/unreported decisions has interpreted provisions of section 7 of the Code. In the case of Patel Baldevbhai Ambalal Vs. State of Gujarat, 1998(1) GLH 932 and in the case of Gujarat Panchayat Parishad Vs. State, Special Civil Application No. 7240 of 1997 decided on 24.4.1998 by the Division Bench of this Court (Coram: K.Sreedharan,CJ & A.R. Dave,J.), this Court in terms held that before exercise of powers under section 7 of the Code, the Government is not bound to issue notice to the concerned Gram Panchayat and a general notice to the residents of the concerned villages. In substance, the contention that before exercising powers under section 7 of the Code for reconstitution of talukas, the Government is required to follow the principles of natural justice has been

negatived by this Court. Learned Counsel Mr.Patel for the appellants, however, invited our attention to the decision of the apex Court in the case of Baldevsingh Vs. State of H.P., AIR 1987 SC 1239 and in the case of State of U.P.and ors. Vs. Pradan Sangh Kshetra Samiti and ors., AIR 1995 SC 1512. IN para 4 of the said judgment, the apex Court observed as under:

"Citizens of India have a right to decide what should be the nature of their society, in which they live- agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances, it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of way of life, higher incidence of tax and the like. "

The apex Court made the said observations considering the facts of the case, namely that four villages inhabited by agriculturists and having a rural set up and forming part of gram panchayats under the relevant statute were sought to be constituted as notified areas under section 256 of the Himachal Pradesh Municipal Act and in this background, the apex Court held that before the notified area was constituted, the people of the four villages should have been afforded an opportunity of being heard and the decision should have been taken after considering the views of the residents.

As far as the present case is concerned, the nature of society in which the concerned villagers are shifted does not change. Only their administration is change from one taluka panchayat to another taluka panchayat.

11. The Division Bench in the case of Gujarat Panchayat Parishad (supra), in fact, considered the judgment of the apex Court rendered in the case of State of UP Vs. Pradan Sangh Kshetriya Samiti, AIR 1995 SC 1512 and rejected the contention about applicability of principles of natural justice by giving reasons as under:

"(i) The institution of self government should not be interfered with. By reconstitution of the panchayat area, if any portion of that area falls outside the jurisdiction of an institution of

self-government, that will violate the constitutional mandate. If no part of the panchayat area, on reconstitution or reorganisation, falls outside the institution of self government, such reconstitution or reorganisation cannot be faulted. The area which thus becomes attached to the new District Panchayat/ Taluka Panchayat will continue to be under an institution of self Government.

(ii) The Bombay Land Revenue Code authorises Government to reorganise Districts and Talukas. The boundaries of the taluka have to be specified by the State Government and can be changed by the State Government. After the amendment of Constitution by Seventy Third Amendment, Gujarat Panchayats Act No.18 of 1993 was enacted. That defines 'Panchayat' to mean ' a village panchayat, taluka panchayat or district panchayat'. Similarly, 'district' has been defined in that Act as a 'district constituted from time to time under the Land Revenue Code.' Similarly, 'taluka' has been defined as one 'constituted from time to time under the Land Revenue Code.' 'Village Panchayat' is defined as one 'Constituted under the Act. It is clear that the Taluka Panchayat or District Panchayat should be in relation to the Taluka or District as constituted by the Government from time to time under the Bombay Land Revenue Code. Thus, in the case of State of U.P. Vs. Pradhan Sangh Kshetriya Samiti, AIR 1995 SC 1512, it is held that the State Government has power to change the boundaries of the Districts and Talukas.

(iii) Section 9(2) of the Panchayats Act, as it stood prior to the amendment of 1993, provided for consultation with Taluka Panchayat, District Panchayat and the Nagar or Gram Panchayat before deciding on the question as to whether a local area shall be included or excluded to any Nagar or Gram. Such provisions have been specifically excluded when Act No.18 was enacted in 1993. The exclusion of this provision shows that the Legislature wanted to exclude the provision for consultation. In other words, Legislature specifically excluded the application of principles of natural justice in the case of reorganisation or delimitation of Panchayats of other local self government. Looking into this legislative history, it can safely be taken that

the Legislature expressly excluded the application of rule of natural justice. In such a situation, this Court cannot read into the provisions of section 7 of the Bombay Land Revenue Code principles of natural justice (vide Dr.Rash Lal Yadav. Vs. State of Bihar & Ors., JHT 1994 (7) SC 62)."

12. Suffice it to say that we are in total agreement with the view taken by the Division Bench in the judgment rendered in Gujarat Panchayat Parishad (supra). In our view, the learned single judge was perfectly justified in following the decision of this Court rendered in the said case which has also considered the decision of the apex Court in Pradhan Sangh's case (supra). True, the apex Court in Pradhan Sangh's case (supra), observed that reasonable opportunity for placing objections and hearing ought to have been given to the village people when the change in area/ local boundaries results in civil consequences. It may be stated that it was not disputed before the apex Court that the action of bringing more villages than one village under one gram panchayat did involve civil consequences. The learned Counsel in the instant case has not produced sufficient material on record to show as to how the impugned decision, namely shifting village Kahoda from Sidhpur taluka and placing it in Unjha taluka and abolishing Bhildi and again making 53 villages as part of original Deesa taluka would involve civil consequences. It was pointed out that the representatives of taluka panchayat would lose their right to represent taluka. In our opinion, the said contention has no merit and is required to be rejected.

13. After having gone through the reasonings of the learned single judge, we not only agree with the reasonings on this point, but on all the points including the contention of alleged malafide raised by the appellant. It would be a mere repetition and, therefore, we refrain ourselves from repeating the same in the present judgment.

14. No other contentions were advanced. There being no substance in these appeals, both these appeals are dismissed with no order as to costs.

(D.M.Dharmadhikari,C.J.) (K.R.Vyas,J.)

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